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July 23, 2008

By ECF

Honorable Denise L. Cote  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, N.Y. 10007

**Re: United States v. Tavarez**  
**No: 07-CR-841 (DLC)**

Dear Judge Cote:

As Your Honor is aware, by letter dated June 6, 2008, the undersigned requested an adjournment as being engaged in the matter styled as *United States v. Emanuel*, before the Hon. Katherine S. Hayden, of the United States District Court for the District of New Jersey. In that communication, counsel had indicated that he also required additional time to conduct legal research regarding the use of a Youthful Offender conviction in the State of New York. On June 10, 2008, Your Honor issued an Order adjourning the matter to July 25, 2008, at 12 p.m., allotting defense counsel to submit a sentencing submission by July 11, 2008.

Based upon research conducted by the undersigned, it was determined by counsel that this court would be bound by the decision enunciated by the Second Circuit in *United States v. Matthews*, 205 F.3d 544, 546 (2<sup>nd</sup> Cir. 2000) which held that it is appropriate for courts to consider prior youthful offender adjudication in calculating criminal history points pursuant to U.S.S.G. §§4A1.1 and 4A1.2. *See, e.g., United States v. Nelson*, \_\_\_ F.3d \_\_\_, No. 06-4983 (2<sup>nd</sup> Cir., March 5, 2008). As such, counsel chose to forego a sentencing submission regarding the objections taken to the pre-sentence report, but will address this matter with the Second Circuit on direct appeal.

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Thank you very much for your time and consideration in this matter.

Very truly yours,

  
PAUL S. BRENNER, ESQ.

PSB/rp  
file